COMMITTEE ON GOVERNMENT REFORM
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FACT SHEET

Energy Bill Industry Give-Aways

The energy bill now being finalized in conference contains an extraordinary collection of special interest favors for energy industries — oil and gas, coal and electric utilities, nuclear power, and ethanol. These give-aways come in a variety of flavors: exemptions from environmental laws; tax-breaks; liability shields; loan guarantees; increased access to public lands; grants; reduced royalties for extracting resources from public lands; federal funding for research and development; and more. For each give-away, the American public has to pay: in tax-dollars, in dirtier air and water, and in damage to public lands.

While the bill grants almost every item on industry wish lists, it lacks virtually all of the key components of a national energy policy. The bill, if anything, *increases* our dependence on oil. The bill does not protect electricity consumers from the market manipulation and price gouging that was experienced during the California energy crisis. The bill fails to set any national requirement for use of clean, safe, and domestically produced renewable energy in generating electricity. The bill contains minimal energy efficiency provisions, even though the cheapest, cleanest, and most reliable source of energy supply is often increased efficiency. The bill ignores the problem of climate change, encouraging capital investments that will produce more greenhouse gas emissions for decades to come.

The examples below highlight some, but by no means all, of the energy bill industry give-aways. Among other things, this list does not include any of the multi-billion dollars of tax breaks contained in the bill.[1]

This list identifies over a dozen types of give-aways to the oil and gas industry, a dozen types of give-aways to the coal and utility industries, and many more give-aways to the nuclear power industry, ethanol producers, and auto manufacturers. Examples include: exemptions from the

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[1] This analysis reflects the provisions contained in the Chairmen's Proposed Conference Report, Nov. 17, 2003. Except where otherwise noted, CBO cost estimates are drawn from the following: CBO, *Cost Estimate, H.R. 6, As introduced on April 7, 2003* (Apr. 8, 2003); CBO, *Cost Estimate, H.R. 238, Energy Research, Development, Demonstration, and Commercial Application Act of 2003, As ordered reported by the House Committee on Science on April 2, 2003* (Apr. 15, 2003); CBO, *Cost Estimate, H.R. 1644, Energy Policy Act of 2003, As reported by the House Committee on Energy and Commerce on April 8, 2003* (May 1, 2003); CBO, *Cost Estimate, S. 14, Energy Policy Act of 2003, As introduced on April 30, 2003* (May 7, 2003); CBO, *Cost Estimate: S. 791 Reliable Fuels Act* (May 6, 2003).

Clean Water and Safe Drinking Water Act for oil and gas companies; a liability shield for the oil and gas industry for groundwater cleanup worth an estimated $29 billion; $2 billion for oil and gas research and demonstration projects; over a billion dollars in loan guarantees for a few specific coal-fired power plants; $2 billion to pay coal-fired power plants to install required pollution controls; reclassification of highly radioactive nuclear waste to allow it to be disposed of as if it were less radioactive; and $1.135 billion for development of an advanced nuclear reactor.

OIL & GAS

- **Clean Water Act Exemption.** Section 328 exempts oil and gas construction activities from the Clean Water Act, even though other entities conducting functionally identical large construction activities must obtain permits and control their pollution runoff.

- **Safe Drinking Water Act Exemption.** Section 327 provides an exemption from the Safe Drinking Water Act for hydraulic fracturing, an oil and gas drilling technique. This exemption allows diesel fuel to be injected into underground sources of drinking water without any federal oversight to protect against the potential risk to drinking water resources and public health. Halliburton is an industry leader in providing hydraulic fracturing services.

- **Liability Shield for MTBE Cleanup.** Section 1502 establishes a retroactive product-liability shield, which exempts the oil industry from liability for an estimated $29 billion cost to clean up drinking water sources contaminated with MTBE nationwide. The effect of the retroactivity is to invalidate claims filed by the State of New Hampshire and others.

- **MTBE Transition Assistance.** Section 1503 authorizes $2 billion (over eight years) in grants to MTBE producers switching to producing other fuels or fuel additives.

- **Expedited Oil and Gas Leasing on Public Lands.** Multiple provisions aim to increase oil and gas leasing and drilling on public lands and to minimize the inclusion of environmentally protective lease stipulations.[2] The bill starts by establishing an office in the White House to coordinate and expedite permitting of energy projects on public lands. Then it requires the Secretary of the Interior to review federal oil and gas leasing and permitting practices and report on actions to expedite leasing and permitting. It also requires the Secretary of the Interior to promulgate regulations setting timeframes for federal actions on leasing and drilling applications and for public appeals of such actions. It authorizes $160 million over four years to "improve" and speed these leasing and permitting activities. Additionally, the bill directs the Secretaries of the Interior and Agriculture to enter into an agreement to speed processing of oil and gas leasing and drilling applications for public lands and to minimize lease stipulations (which aim to protect environmental resources). Finally, it requires certain federal agencies (such as EPA, the Army Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Forest Service) to detail their staff to specified Bureau of Land Management field offices.

[2] These provisions are contained in sections 341–344 and 348.

The detailed staff are to be responsible for asserting their home agency's concerns in the oil and gas permitting process, such as ensuring compliance with the Endangered Species Act and the wetlands protections provisions of the Clean Water Act. Yet these staff would be located in BLM offices and would report to BLM managers.

- **Reimbursement for Environmental Impact Studies.** Section 326 authorizes the Secretary of the Interior to reimburse oil and gas companies proposing to drill on federal lands for the cost of required environmental impact studies. The federal government conducts environmental impact studies prior to granting a lease. Increasingly, however, oil and gas drillers have been conducting these studies for the government, as drillers want the studies done faster and benefit from having more control over the outcome. This provision requires the government to reimburse drillers for studies that they choose to conduct and control. Based on CBO estimates, this will cost the Treasury $330 million over the next ten years.[3]

- **Royalties Dedicated to Oil and Gas Projects.** Sections 941–949 provide a dedicated ten-year royalty stream of $1.5 billion, plus an authorization for an additional $500 million, for an R&D program for ultra deep and "unconventional" oil and gas drilling technologies. The program would be largely run by a private consortium, which could include oil companies. Members of the consortium may receive awards for projects, which include "commercial applications" of technology. Thus, commercial drilling projects are eligible for these funds. Halliburton is a leader in new and developmental drilling technologies.

- **Royalty Give-Aways for Offshore Drilling.** Sections 314 and 315 provide royalty incentives for offshore drilling for deep water production and ultra deep gas wells. CBO estimates this will cost the Treasury $95 million over the next ten years.

- **Royalty Give-Aways for the Western Arctic.** Section 317 authorizes the Secretary of Interior to waive or reduce royalties for oil and gas production in the western Arctic (NPRA area) whenever the Secretary determines this would be in the public interest. This provision was not in any previous version of the bill, so CBO has not yet estimated the cost. It will probably be comparable to the cost of other royalty relief provisions in the bill, which are in the tens of millions of dollars.

- **Expedited Drilling Permits.** Section 349 removes the discretion of the Secretary of the Interior to deny applications to drill on public lands. Upon receiving an application for a permit to drill in a particular portion of a leased area, this section allows the Secretary just 30 days to determine if any additional information is necessary in order to grant the permit to drill. Once the applicant provides this information, the Secretary is required to approve the application regardless of whether drilling in the time and place proposed would be unnecessarily environmentally damaging. Although the language is ambiguous on this point, the provision may also apply to drilling in National Forests.

[3] CBO's estimate of the cost has been adjusted to account for revisions to the provision, per discussions with CBO staff.

- **Allow Royalties to Be Paid in Kind.** Section 312 allows the Secretary of Interior to accept oil and gas in lieu of monetary royalties for production on public lands. The federal government must then sell or otherwise dispose of the oil or gas, using a portion of the royalty receipts to pay the costs of transportation, processing, and disposal. CBO estimates this will cost the federal government $10 million over the next ten years.

- **Oil Drilling in the Western Arctic.** Section 317 facilitates oil leasing, exploration, and development in the western Arctic (NPRA). Among other things, this section waives federal government administration of oil and gas leases in which the subsurface estate is conveyed to the Arctic Slope Regional Corporation. This may mean that federal environmental protections required under the National Environmental Policy Act and the Endangered Species Act would be carried out by a private for-profit corporation. Or, such protections might largely no longer apply. As a result, drilling is likely to proceed with few if any protective stipulations (e.g., stipulations might otherwise limit drilling during wildlife breeding periods, or require use of less damaging drilling practices).

- **Outer Continental Shelf Easements to Support Drilling.** Section 321 authorizes the Secretary of the Interior to grant easements or rights-of-way for activities on the outer Continental Shelf (including in areas currently under the drilling moratoria) that "support" exploration, development, production, transportation, or storage of oil and gas. It also authorizes payments to be made on a one-time or annual basis only and prohibits the government from collecting royalties based on the value of the energy produced.

- **Deadlines for Decisions on Activities in Coastal Zone.** Section 325 limits the timeframe for the Department of Commerce to rule on an appeal of a state's determination that a particular activity off the state's coast is not consistent with that state's coastal zone management program. The section also limits the materials that can be considered in the appeal.

- **Subsidy for Coalbed Methane Drilling.** Section 335 authorizes $500 million over five years in loans for demonstration projects extracting oil and gas from "unconventional" reserves, such as coalbeds and tar sands. Loan focus areas are to include "horizontal drilling," "3-dimensional" seismic techniques, and "enhanced recovery," all of which are techniques that Halliburton specializes in.[4]

- **Loan Guarantees for Alaskan Natural Gas Pipeline.** Section 386 authorizes loan guarantees of up to $18 billion for an Alaskan natural gas pipeline, at an estimated cost to the government of $1.8 billion.

- **Leaking Underground Storage Tank Cleanup.** Section 1531 authorizes $605 million over five years to support cleanup of leaking underground storage tanks, but opens the

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[4] It is not clear why coalbed methane is considered an unconventional resource requiring government support. There are currently 12,000 coalbed methane wells in the Powder River Basin (located in Wyoming and Montana) alone, and BLM is studying the impacts of a projected total of up to 51,000 coalbed methane wells in that area. *Worries over Water in Wyoming Coalbed Methane,* Reuters (Apr. 29, 2002).

door to providing these funds to financially viable companies. This reverses the "polluter pays" principle that has underpinned the LUST program and helps maximize the effect of the funding.

COAL AND ELECTRIC POWER PRODUCERS

- **Rights-of-Way for Transmission Lines and Pipelines on Federal Lands.** Section 351 requires the Secretaries of Agriculture, the Interior, Commerce, and Defense, in consultation with FERC and industry (but not with the public or EPA), to designate corridors on public lands for electricity transmission lines and oil and gas pipelines. This elevates transmission lines and pipelines above all other public lands uses, which would normally be set through a land use planning process.

- **Minnesota Coal Plant Subsidy.** Section 407 authorizes an estimated up to $800 million loan guarantee for construction of a huge new power plant in Minnesota, promoted by Excelsior Energy.[5]

- **Alaska Coal Plant Subsidy.** Section 405 authorizes a $125 million loan to the Healy coal plant in Healy, Alaska, which is owned by the Alaska Industrial Development and Export Authority.

- **Loan Guarantees.** Sections 406 and 408 authorize an unspecified amount of loan guarantees for a specific coal gasification plant and a petroleum coke gasification project.

- **Eliminate Deadline for Reclamation Plan.** Section 425 eliminates the current requirement that a lessee mining coal on public lands must submit an operation and reclamation plan within three years after obtaining the lease.

- **Repeal 160-Acre Limitation for Coal Leases.** Section 421 repeals the current limit on the total acreage allowed under an expanded coal mining lease on public lands. Instead of a limit of 160 acres, this provision would allow up to 1280 acres under a single lease, an eight-fold increase.

- **Extension of Mining Period.** Section 422 provides that DOI may allow a mining unit on public lands to be mined for more than 40 years, which is the current limit. This removes the incentive for diligent production and allows areas to be subject to disturbance for an indefinite time-period.

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[5] Senator Coleman has taken a position opposing drilling in the Arctic National Wildlife Refuge. However, upon addition of this provision, he stated, "I would be very, very hard pressed — very hard pressed — to vote against an energy bill ... that has a power plant for northeast Minnesota," in addition to support for ethanol and biodiesel. *Coleman Rethinks ANWR Position,* TwinCities.com (Pioneer Press) (Sept. 30, 2003).

- **DOE Heads Environmental Reviews of Energy Projects on Public Lands.** Section 352 requires DOE to enter into an agreement with other federal agencies to establish a single environmental review process, headed by DOE, for power plants, transmission lines, pipelines, and storage facilities, on public lands. This minimizes the roles of the U.S. Fish and Wildlife Service and the resources agencies in evaluating the environmental impacts of development on public lands.

- **Repeal of PUHCA to Deregulate Electricity Markets.** The electricity title includes a repeal of the Public Utility Holding Company Act, which has been long sought by electric utilities and other companies seeking to expand into these markets. PUHCA protects consumers by limiting ownership of electricity production and ensuring that ratepayers do not get stuck paying for bad investments in non-power sectors.

- **Royalties Dedicated to Alaskan Energy.** Section 1401 provides funds for the Denali Commission for energy generation and development projects. The section diverts a 20-year royalty stream for a total of $1 billion, plus an additional authorization of $35 million over seven years. By dedicating funds "notwithstanding any other provision of law," this section (in combination with other new royalty demands) threatens the Land and Water Conservation Fund and the Historic Preservation Fund, which depend on funding from royalties.

- **Subsidies for Pollution Controls.** Section 401 authorizes $1.8 billion over nine years for clean coal technology demonstration projects, in which the federal government will pay up to 50% of the cost of pollution controls for new and existing coal-fired power plants.

- **Subsidies for Pollution Controls and Coal-Fired Generation Projects.** Section 441 authorizes $2 billion over ten years for pollution controls on coal-fired power plants and for coal-fired generation projects, including repowering older units. The federal government may pay up to 50% of the cost of these projects, many of which may already be required under the Clean Air Act.

NUCLEAR

- **Nuclear Plant Subsidy.** Sections 651–655 authorize $1.135 billion over ten years for research on an advanced nuclear reactor that can generate hydrogen. The project lead is the Idaho National Engineering and Environmental Laboratory, which is a DOE-funded lab run by Bechtel BWXT Idaho, L.L.C.[6]

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[6] Bechtel BWXT Idaho, L.L.C. is a limited liability company composed of Bechtel, BWX Technologies (a nuclear technology company), and a university consortium.

- **In Situ Leach Mining Subsidies.** Section 632 authorizes $30 million over three years to fund development and demonstration of in situ leach uranium mining technologies and other projects with uranium producers. In situ leach uranium mining is opposed by environmental interests as a particularly dangerous technology. It leaches radioactive uranium and other toxic chemicals into groundwater that is used in many areas as drinking water, and it poses a major public health threat for communities surrounding the mines.[7]

- **Reclassification of Fernald Nuclear Waste.** Section 635 reclassifies nuclear waste at the Fernald uranium processing plant to allow it to be more easily disposed of as "by-product" material. Because the waste is highly radioactive, it currently can only be disposed of at a site that is certified to handle more hazardous radioactive waste. This provision was reportedly sought by Envirocare, a Utah company with a private waste disposal site, and by DOE, which could dispose of the waste more cheaply if it had a lower classification.[8] Absent reclassification, this waste could not be sent to the Envirocare facility.[9]

- **Fusion Research Subsidy.** Section 951 authorizes $2.081 billion over ten years for research into fusion energy, which is widely believed to be, at a minimum, 50 years away from commercial viability as an energy source.

ETHANOL

- **Massive Ethanol Mandate.** While this portion of the bill has not yet been released, the bill is expected to require the use of a rising quantity of renewable fuel, reaching five billion gallons of renewable fuel per year by 2012. This ethanol mandate will raise gas prices, costing consumers an estimated up to $6.9 billion over ten years, according to the Energy Information Administration.[10]

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7 Friends of the Earth, *Fact Sheet: Nuclear Power back from the Dead?* (July 2001).

8 *Panel Opens Door to Hotter Radioactive Waste in Utah,* Associated Press (Nov. 11, 2003); *Walker to Take up Waste Fight,* Salt Lake Tribune (Nov. 12, 2003).

9 *Id.*

10 Energy Information Administration, Office of Integrated Analysis and Forecasting, *Analyses of Selected Provisions of Proposed Energy Legislation: 2003* (Sept. 2003) (online at www.eia.doe.gov/oiaf/servicerpt/eleg/pdf/sroiaf(2003)04.pdf). EIA found that the renewable fuel standard would increase gasoline prices by not more than 0.5 cents per gallon. Since the U.S. consumes approximately 9 million barrels of gasoline per day, this amounts to an additional $1,890,000 each day. This amounts to $689,850,000 each year or almost $6.9 billion over ten years.

MOTOR VEHICLE MANUFACTURERS

- **CAFE Loophole Extension.** Section 773 extends for four years (and authorizes DOT to extend for an additional four years) a loophole in the fuel efficiency requirements.[11] The loophole gives manufacturers CAFE credits for producing vehicles that can run on either gasoline or an alternative fuel. As these vehicles are actually operated almost exclusively on gasoline, the effect of this loophole has been to increase U.S. oil consumption.[12] This provision will *increase* U.S. oil consumption by an estimated 56,000 to 155,000 barrels per day by 2008 and up to 250,000 barrels per day by 2012.[13]

- **CAFE Standards to Consider Auto Industry Employment.** Section 772 changes the criteria for setting the CAFE standards. Under current law, DOT must require vehicles to achieve the "maximum feasible average fuel economy." In determining what is the "maximum feasible" efficiency, DOT must consider "technological feasibility, economic practicability, the effect of other motor vehicle standards of the Government on fuel economy, and the need of the United States to conserve energy." This section adds consideration of the effects of the standard on motor vehicle safety and on U.S. auto industry employment.

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[11] DOT has proposed, but not yet finalized, a more modest extension of the CAFE credits. 67 Fed. Reg. 10873 (Mar. 11, 2002).

[12] U.S. DOT, *Report to Congress — Effects of Alternative Motor Fuels Act CAFE Incentives Policy*, 37, 42 (Mar. 2002); National Research Council, *Effectiveness and Impact of Corporate Average Fuel Economy (CAFE) Standards*, 111 (2002).

[13] The exact amount depends on the extent to which manufacturers use the provision. American Council for an Energy Efficient Economy, *Reforming Dual Fueled Vehicle CAFE Credits* (Sept. 30, 2003).